IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 72,697

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CHARLES W. KANE, SHERIDAN PLYMALE, PETER WALSON, LISA LYONS, E. CLARK GIBSON, STEWART R. HERSHEY and BETSY WALSON,

Plaintiff's/Petitioners,

vs.

PEGGY S. ROBBINS, as Supervisor of Elections for Martin County, Florida, and THE SCHOOL BOARD OF MARTIN COUNTY, FLORIDA,

Defendants/Respondents.

_______________________________/

RESPONDENT PEGGY S. ROBBINS' BRIEF ON JURISDICTION

On Petition for Discretionary Review of a Decision of The District Court of Appeal of Florida, Fourth District

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STATEMENT OF CASE

Respondent Peggy Robbins has no disagreement with the Statement of Case as set forth in Petitioner's Brief on Jurisdiction.

SUMMARY OF ARGUMENT

The limits of this Court's discretionary jurisdiction are set forth in Article V, §3(b)(3), Fla. Const., as well as in Fla.R.App.P. 9.030(a)(2)(A). Petitioners seek to invoke this Court's discretionary jurisdiction based upon three separate grounds. These are:

1. The opinion of the Fourth District Court expressly construes a provision of the State Constitution;

2. That decision expressly affects a class of constitutional officers; and

3. That decision expressly conflicts with this Court's decision in School Board of Escambia County v. State, 353 So.2d 834 (Fla. 1977).

Respondent admits that the decision below expressly construes Article III, §11(a)(1), Fla. Const. However, in order to vest this Court with discretionary jurisdiction, the decision below must be one which does more than simply modify or construe or add to existing case law. As the Court below ruled, its decision is in keeping with established case law, and therefore, this Court's consideration of this particular appeal would serve no useful purpose in clarifying or establishing the law of the State, with which the case below is totally consistent.

The "constitutional officers" allegedly involved in this case are the members of the Martin County School Board. For

purposes of construing the constitutional provision regarding the Supreme Court's jurisdiction, members of a school board are not "a class of constitutional officers" and therefore the Petitioner cannot rely on this provision to invoke this Court's discretionary jurisdiction. Furthermore, the decision below affects only those individuals in Martin County who decide to seek election for a seat on the Martin County School Board. This decision does not similarly affect every other school board member in the State of Florida. The election of school board members in each County is governed by the law of that County. Some are elected on a partisan basis and some are not. The procedures already in place in other Counties for electing school board members will not be affected by the decision below. Finally, this decision does not affect the duties of school board members, per se. It only affects how those members are elected, and not how they eventually perform once they are in office. As such, this decision does not qualify for consideration under that provision of the Florida Constitution which allows this Court to consider decisions which expressly affect "a class of constitutional officers."

The decision below does not expressly conflict with this Court's decision in School Board of Escambia County v. State. That case did not consider the question of whether a special act establishing non-partisan school board elections in Escambia County was or was not constitutional. In construing the application of Article III, §11(a)(1) to the act, that Court addressed only the provision which reduced the salaries of school board members of Escambia County to $200.00 per month. The Court held that such a

provision was not in violation of Article III, §11(a)(1). In other words, the Court upheld the constitutionality of the special act, and the decision below does not conflict with that holding.

In their Brief, Petitioners state that "this case is of exceptional public importance (there are conflicting Circuit Court and Attorney General opinions on this issue, which are applicable in other Counties of this State)." There is no provision anywhere in Florida law which supports this statement as a proper ground on which to base this Court's jurisdiction. This case has not been certified by the Fourth District Court as being one of great public importance. Therefore, this Court should disregard all portions of the Brief which relate to this Argument.

Finally, Petitioners devote a good portion of their Brief to the merits of the case. This is clearly improper. Also, Petitioners have appended to their Brief numerous documents which should not be part of this Court's determination concerning its jurisdiction over this case. All items except the conformed copy of the decision below should therefore be stricken from Petitioner's Brief.

ARGUMENT

(a) Although the decision below construes a provision of the Florida Constitution, this Court should still not accept jurisdiction over this case because no useful purpose would be served by doing so.

It cannot be honestly disputed that the Court below expressly construes a provision of the State Constitution, namely Article III, §11(a)(1). The Fourth District Court held, citing precedent, that this constitutional provision did not prohibit the

enforcement of a special act which provided for non-partisan school board elections in Martin County. The Court below determined that school boards are "special districts" for purposes of the construction of this constitutional provision, and thus fall within the provision's exceptions.

Despite this fact, this Court's discretionary jurisdiction exists not simply to resolve disputes between individual litigants but to preserve the purity and clarity of the law in this State. As discussed above, the Fourth District's decision is completely consistent with this Court's prior holding in Escambia County. Both cases uphold the validity of special acts which affect the election of school board members.

Petitioners also discuss the lower court's interpretation of Article IX, §4, Fla. Const., which provides that school board members shall be elected "as provided by law". Respondents argued, and the lower court agreed, that the term "by law" should be construed as encompassing both general law and special law, making the special act in question constitutional under this particular provision. The Court below cited Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979) in support of this proposition. Thus, in construing this constitutional provision, the lower Court was once again consistent with prior holdings of this Court, and no useful purpose would be served by this Court accepting jurisdiction over this case.

This Court's discretionary jurisdiction should be limited to cases which substantially affect the law of the State. See generally, Spradley v. State, 293 So.2d 697 (Fla. 1974). This

case does not substantially affect the law of the State in that its holding is entirely consistent with prior precedent. Therefore Respondent suggests that this Court refuse to invoke its discretionary jurisdiction in this case.

Respondent also strongly objects to Petitioner's argument of the merits in Part One of their Brief. Their discussion of the Appellate Court's ignorance of the legislative history, the Appellate Court's violation of "fundamental rules of statutory construction", and their mention of the portion of Judge Walden's dissent regarding Florida Statutes which allegedly conflict with the majority's decision is completely unrelated to whether or not this Court should initially except jurisdiction over this case. It is completely inappropriate to argue the merits of the case at this point, and all portions of Petitioner's Brief which attempt to do so should not be considered by this Court. See, Commentary to Rule 9.120, Fla.R.App.P.

(b) This decision does not expressly affect a class of constitutional officers.

In their Brief, Petitioners assert that the jurisdiction of this Court should be invoked because the decision "expressly affects the class of constitutional officers." Interestingly, a quick review of the Argument portion of Petitioners' Brief reveals that they have done nothing more than conclude that this decision supposedly affects a class of constitutional officers. No argument is put forth in support of that position.

There is, however, a good deal of argument in opposition to that position. First of all, school board members are not a "class" of constitutional officers within the constitutional

provision regarding the jurisdiction of this Court. This Court's decision in Florida State Board of Health v. Lewis, 149 So.2d 41 (Fla. 1963) discussed the meaning of the word "class" in a situation quite similar to the case sub judice. Justice Thornal's opinion included the following definition of the word "class" as it is employed in the constitutional provision regarding this Court's jurisdiction:

> The "class". . . means two or more constitutional or state officers who separately and independently exercise identical powers of government. In this sense, a group of officers composing a single governmental entity such as a Board or Commission would not as such Board or Commission constitute a "class". 149 So.2d @ page 43.

Thus, members of a Board (in this case, the Martin County School Board) are not considered a "class" of constitutional or state officers within the meaning Article V, §3, Fla. Const.

The Florida State Board of Health decision further construes this constitutional provision by stating that:

> "The obvious purpose of the provision in question was to permit this Court to review a decision which directly affects one state officer and in so doing similarly affects every other state officer in the same category." 149 So.2d @ page 42.

Even if one concedes that school board members are constitutional officers for purposes of this provision, the decision below does not "similarly affect" every other school board member in this state. The special act in question merely provides for non-partisan school board elections in Martin County. As Petitioners have made mention of numerous times, there are other counties in this state which elect school board members

on a partisan basis. There are also other counties in Florida which, like Martin County, elect school board members on a non-partisan basis. In other words, every county in Florida has its own way of electing school board members. The methods utilized by these counties will in no way be affected by the Appellate Court's decision in this case, and therefore this Court's discretionary jurisdiction should not be invoked on this ground.

Finally, the decision below has no affect on the "duties" of school board members in Martin County. The special act in question, and the decision below, are concerned merely with how school board members are <u>elected</u> in Martin County. Once they are elected, the exercise of their duties proceeds unimpeded by the special act in question or the decision below. Cases which have reached this Court under this provision of Article V, §3(b)(3) have been cited as directly affecting the <u>duties</u> of constitutional officers. <u>See, e.g., Pinellas County v. Nelson</u>, 362 So.2d 279 (Fla. 1978). Since the decision of this case does not have an affect on the duties of school board members, this Court cannot take jurisdiction over this case.

(c) This case does not conflict with this Court's earlier holding in <u>School Board of Escambia County v. State</u>.

As mentioned elsewhere in this Brief, the Fourth District decision does not conflict with this Court's 1977 decision in <u>School Board of Escambia County v. State</u>. In <u>Escambia County</u>, this Court specifically upheld a portion of a special act which reduced the salary of school board members to

$200.00 per month. The Court specifically stated that the effect of this special act upon the election of school board members in Escambia County was so "incidental and tenuous" and to not be cognizable by the prohibition of Article III, §11(a)(1). Thus, the statutory provision was upheld.

In that case, this Court never reached the question of whether the portion of the special act pertaining to non-partisan elections was or was not constitutional. As such, there is no "express" conflict between that decision and the instant case on the same question of law. In order for this Court's jurisdiction to lie, the two cases must "expressly and directly conflict". Article V, §3(b)(3), Fla. Constitution. Only those facts contained within the four corners of the majority decision may be used to establish this conflict. An inherent or implied conflict is not sufficient; there must be an express and direct conflict. Department of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So.2d 888 (Fla. 1986); Reaves v. State, 458 So.2d 829 (Fla. 1986).

Since there is no express and direct conflict between the Escambia County decision and the case below, this Court should not invoke its jurisdiction in this case.

(d) Petitioner's argument that this case is "of exceptional public importance" is not a proper means of invoking this Court's jurisdiction and should be disregarded.

At the end of the argument portion of their Brief, Petitioners assert that this case is of "exceptional public

importance". In support of this position, Petitioner cite two Florida Circuit Court opinions and an Attorney General's opinion which supposedly conflict with the decision below. Initially, there is no support in either the Florida Constitution or the Florida Rules of Appellate Procedure for using a means such as this for invoking this Court's jurisdiction. Additionally, Florida's Circuit Court decisions and Florida Attorney General's opinions are not binding on the Fourth District, much less on this Court. The Fourth District Court opinion stands as the conclusive determination on the issues before it, until and unless another court of equal authority or this Court decides to rule on the issue. All argument in this regard is improper and should be stricken from Petitioner's Brief, or at the very least disregarded by this Court.

It should be noted that the Court below did not certify this case as including any questions of great public importance. When no such questions are apparent from the record, the Supreme Court does not have jurisdiction. The Petitioner cannot, by request, confer jurisdiction on this Court when none exists. Bullard vs. Wainwright, 313 So.2d 653 (Fla.1975).

Finally, Rule 9.120(d), Fla.R.App.P., reads in pertinent part as follows:

> Petitioner's Brief, limited solely to the issue of the Supreme Court's jurisdiction and accompanied by an appendix containing a conformed copy of the decision of the District Court of Appeal, shall be served within 10 days of filing the notice. (Emphasis added)

As stated above, Petitioner spent a good deal of their brief arguing the merits of this case, which is improper. Additionally, Petitioners have inserted numerous improper papers in their appendix, including a Circuit Court Final Judgment, their Motions for Rehearing below, and attachments thereto, which include such things as newspaper articles. All of these matters go far beyond the issues related to this Court's jurisdiction in this case. They should be stricken from the Brief.

CONCLUSION

For all of the reasons stated above, this Honorable Court should decline to review the decision below.

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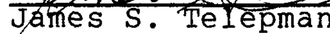
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 5th day of August, 1988 to: Douglas K. Sands, Esq., 300 Colorado Avenue, Stuart, Florida, 34994; and Thomas E. Warner, Esq., P.O. Drawer 6, Stuart, Florida, 34995-0006.



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